



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: All Cape Corporation

File: B-275736

Date: March 20, 1997

Paul S. Hughes, Esq., for the protester.

Jeanne Anderson, Esq., Department of Veterans Affairs, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency deprived incumbent contractor of an opportunity to compete because the firm did not receive a mailed copy of the solicitation is denied where the record shows that the agency followed reasonable procedures for disseminating solicitation documents, there is no indication of any deficiencies in the contracting agency's solicitation process, and there is no evidence that the agency deliberately attempted to exclude the incumbent, who was included on the mailing list at the correct address.

DECISION

All Cape Corporation protests any award under request for proposals (RFP) No. 525-9-97, issued by the Department of Veterans Affairs (VA) for delivery, storage, pick-up, disposal, and repairs of hospital beds. All Cape, the incumbent contractor, contends that the VA improperly failed to provide the firm a copy of the RFP, and that this failure precluded it from submitting an offer. Accordingly, the protester asserts that the solicitation should be canceled and the requirement resolicited to give All Cape an opportunity to compete.

We deny the protest.

The agency published a pre-solicitation notice in the October 11, 1996, Commerce Business Daily, announcing that on approximately October 29 it planned to issue the RFP and that proposals would be due on approximately November 29.¹ The RFP was issued on October 29, and the agency states that following its usual

¹By an agreement dated October 18, All Cape's contract for the services being solicited had been extended for 3 months from October 1 through December 31.

practice, copies were sent by regular mail to the 14 firms on the solicitation mailing list, including the protester. Although All Cape's name was incorrectly listed on the solicitation mailing list as "All Care Corporation, Inc.," an error of only one letter; the correct address and the name under which the protester operates and does business, "Lakeville Health Care," did appear on the solicitation mailing list. Aeromed/American Medical Therapeutic, a firm that did not appear on the mailing list, submitted a proposal by the November 29 closing date.

Thereafter, on December 3, the contracting officer contacted All Cape regarding its failure to submit a proposal and learned that the firm was unaware that an RFP had been issued. On December 10, All Cape filed this protest with our Office.

The protester contends that the agency denied it the opportunity to compete by failing to furnish it with a copy of the solicitation. The protester notes that none of the firms listed on the agency's mailing list submitted a proposal and contends that this indicates that none of the firms on the mailing list received a copy of the RFP. The protester also asserts that the fact that the agency extended its contract for 3 months did not put it on notice that the agency was about to issue an RFP because the protester's previous contracts with the agency were extended by more than 3 months before a new RFP was issued.

The VA takes the position that All Cape's apparent failure to receive the RFP was not the result of any attempt by the agency to exclude the protester from the competition. The agency maintains that it made a good faith effort to comply with the applicable statutory and regulatory requirements regarding notice and distribution of the solicitation. In this regard, the VA points out that other firms on the mailing list received the RFP, as evidenced by the fact that the contracting officer received telephone inquiries regarding the procurement from other firms on the mailing list. Finally, the VA notes that the one proposal it did receive was at a reasonable price.

Under the Competition in Contracting Act of 1984, agencies are required to obtain full and open competition through the use of competitive procedures when procuring property or services. 41 U.S.C. §§ 253(a)(1)(A) (1994). "Full and open competition" is obtained when "all responsible sources are permitted to submit sealed bids or competitive proposals." 41 U.S.C. § 259(c)(4), 403(6). Accordingly, we carefully scrutinize allegations that a firm has not been provided an opportunity to compete for a particular contract and take into account all of the circumstances surrounding the firm's nonreceipt of the solicitation materials, as well as the agency's explanation. Sutton Designs, Inc.--Recon., B-235382.2, Aug. 11, 1989, 89-2 CPD ¶ 131. We will conclude, however, that an agency has met its obligation if it has made a diligent, good faith effort to comply with the statutory and regulatory requirements regarding notice and distribution of solicitation materials and it

obtains competition and reasonable prices. Air Masters Corp., B-262213, Sept. 12, 1995, 95-2 CPD ¶ 110; Metropolitan Int'l Resources, Inc., B-258011; B-258012, Nov. 17, 1994, 94-2 CPD ¶ 196.

Here, we find that the VA satisfied the statutory and regulatory requirements governing notice and distribution of solicitation materials, and the record provides no basis to attribute the protester's nonreceipt of the solicitation to any deficiencies in the agency's dissemination process or to a deliberate attempt to exclude the protester from the competition.

All Cape does not dispute that the solicitation mailing list contains the firm's correct mailing address. Although All Cape's name appears on the mailing list as "All Care," the firm's business operating name and address were listed correctly. All Cape's apparent failure to receive the solicitation in itself does not evidence purposeful or deliberate action on the part of the agency to exclude the incumbent from competing. As a general rule, the risk of nonreceipt of solicitation documents rests with the offeror, as the contracting agency is not a guarantor that these documents will be received in every instance. Metropolitan Int'l Resources, Inc., *supra*.

The fact that the agency did not receive proposals from firms on the mailing list does not establish that the agency failed to mail the solicitation to the listed firms. The contracting officer states that she received inquiries from a number of offerors on the mailing list after the mailing indicating that they had received the solicitation. The record does not suggest that the VA was responsible for All Cape's nonreceipt of the solicitation, and we fail to discern any pattern of negligence on the part of the agency. Further, All Cape was on notice that the VA was about to issue a solicitation, because the firm was operating under a 3-month contract extension. Notwithstanding its alleged prior experience in this respect, All Cape should have been aware that a new solicitation was likely to be issued within the timeframe of the expiration of its contract extension, and had an obligation to inquire in this regard. By failing to do so, it clearly contributed to its inability to compete. See Transtar Aerospace, Inc., B-239467, Aug. 16, 1990, 90-2 CPD ¶ 134. While only one offer was received, the agency determination that it was at a reasonable price is unobjectionable in view of the fact that the price was approximately 14 percent lower than All Cape's most recent price for the same services.

The record demonstrates that the VA complied with the statutory and regulatory requirements regarding notice and distribution of solicitation materials and that it obtained a reasonable price. Accordingly, there is no basis to sustain All Cape's protest.²

The protest is denied.

Comptroller General
of the United States

²All Cape also contends that the agency cannot make award to AeroMed because that firm is not licensed to do business in Massachusetts. The solicitation imposes the general requirement that the contractor "obtain all necessary licenses and/or permits required to perform this work." Where, as here, a solicitation contains only a general requirement that the contractor comply with applicable laws, the prospective contractor--not a federal official--is responsible for determining what the state or local requirements may be. Mark Dunning Indus., Inc., B-258373, Dec. 7, 1994, 94-2 CPD ¶ 226. We therefore need not consider this issue further.

All Cape also contends that AeroMed is not a small business. The solicitation, however, was issued on an unrestricted basis, so that this contention provides no basis for objection.